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## WHAT IS WARTIME?

Stephen M. Griffin\*

MARY L. DUDZIAK, *WAR TIME: AN IDEA, ITS HISTORY, ITS CONSEQUENCES* (2012). Pp. 221. Hardcover \$24.95.

Mary Dudziak's book *War Time* is expressive of a widespread unease with the way America went to war after 9/11.<sup>1</sup> Mainly, it is a work of cultural and intellectual history in which, as expressed by the title, the concepts of war and time are separated for the purposes of analysis and then brought back together in a productive relationship — though with a distinct emphasis on the latter rather than the former. Dudziak is most interested in understanding what makes a historical period a particular temporary “time.”<sup>2</sup> She is less interested in investigating “war,” although this does not detract from the genuine insights yielded by the book.

Dudziak advances her argument on the nature of “wartime” by employing a remarkable variety of material concerning twentieth and twenty-first century wars. In particular, her thought-provoking analysis places the Cold War and the post-9/11 “war on terror” in a very useful relationship, noting the ambiguity of both as wartime.<sup>3</sup> The book also, less successfully, suggests that more conventional wars, such as World War II, had the same ambiguous character.<sup>4</sup> But this latter contention is not essential to the book's suggestive theme of the problems caused by an apparently endless state of wartime in a constitutional democracy.<sup>5</sup>

Dudziak's project could have been called *Whatever Happened to Peacetime?* When was the last time America agreed that it was at peace? Her argument implies that we have become so inured to a militarized foreign policy, fighting wars (big and small), and indefinite in-between periods such as the Cold War that we have lost our sense of what constitutes “peacetime.” Nonetheless, we retain the traditional expectation that wartime is temporary and that peacetime automatically follows wartime.<sup>6</sup> It is this mode

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1. MARY L. DUDZIAK, *WAR TIME: AN IDEA, ITS HISTORY, ITS CONSEQUENCES* 8–9 (2012).

2. *See id.*

3. *Id.* at 68–76, 112–20.

4. *Id.* at 62.

5. *Id.* at 8 (“Wartime has become the only kind of time we have, and therefore is a time within which American politics must function.”).

6. *Id.* at 15–16.

of thinking that Dudziak highlights and puts in question.

We might suppose that peacetime is a period when we are not engaged in a conventional war. It has been claimed, for example, that President Eisenhower presided over such a period after the Korean War ended.<sup>7</sup> Under Eisenhower, there were plenty of foreign commitments and covert operations, but no repetition of the Korea experience.<sup>8</sup> It is also hard to understand the period after the end of the Cold War as wartime.<sup>9</sup> President Clinton presided over a period that many saw as quiet on the foreign front,<sup>10</sup> certainly to the dismay of those elites who felt that genuine threats, such as Saddam Hussein's Iraq, persisted.<sup>11</sup>

To this sort of thinking, Dudziak has two rejoinders, one more persuasive than the other. While Eisenhower showed little inclination to plunge into another conventional war,<sup>12</sup> concentrating on conflicts the size of Korea ignores that the Truman, Eisenhower and Kennedy administrations occurred during the height of the Cold War and demonstrates time and again the ambiguous nature of that conflict.<sup>13</sup> If the Cold War was a real conflict between the United States and the Soviet Union which involved the use of military power, then what citizens experienced under Eisenhower was certainly not "peace."<sup>14</sup> This point is well taken. Dudziak goes much further, however, and contends, largely on the basis of a review of military medals awarded, that essentially the entire twentieth century was wartime.<sup>15</sup>

To be sure, Dudziak is on solid ground when, like many historians, she emphasizes the neglected importance of the many "small wars"<sup>16</sup> in which the United States was involved in the twentieth century, particularly in Latin America.<sup>17</sup> She argues that "[i]t is only through forgetting the small wars that so much of American history is remembered as peacetime."<sup>18</sup> But Dudziak determinedly ignores the issue of the *relative significance* of America's various and very different twentieth-century military conflicts to our post-9/11 reality. One plausible policy-oriented way to distinguish among America's wars, for example, is to take into consideration the importance of the foreign policy objectives

7. See DAVID A. NICHOLS, *EISENHOWER 1956: THE PRESIDENT'S YEAR OF CRISIS: SUEZ AND THE BRINK OF WAR* 3–4 (2011) (recounting President Eisenhower's reluctance to engage in any foreign conflict following the end of the Korean War).

8. See *id.* at xv.

9. DUDZIAK, *supra* note 1, at 100 (discussing the few events closest to "wartime" between the end of the Cold War and 9/11).

10. IVO H. DAALDER & I.M. DESTLER, *IN THE SHADOW OF THE OVAL OFFICE: PROFILES OF THE NATIONAL SECURITY ADVISERS AND THE PRESIDENTS THEY SERVED: FROM JFK TO GEORGE W. BUSH* 212–13 (2009).

11. JAMES MANN, *RISE OF THE VULCANS: THE HISTORY OF BUSH'S WAR CABINET* 236 (2004). See also the useful review in DEREK CHOLLET & JAMES GOLDGEIER, *AMERICA BETWEEN THE WARS, FROM 11/9 TO 9/11: THE MISUNDERSTOOD YEARS BETWEEN THE FALL OF THE BERLIN WALL AND THE START OF THE WAR ON TERROR* 187–93 (2008).

12. NICHOLS, *supra* note 7, at 3–4.

13. See DUDZIAK, *supra* note 1, at 70–71, 91–92, 80–81.

14. See, e.g., NICHOLS, *supra* note 7.

15. DUDZIAK, *supra* note 1, at 26–32.

16. *Id.* at 30.

17. *Id.* at 32. See, e.g., GREG GRANDIN, *EMPIRE'S WORKSHOP: LATIN AMERICA, THE UNITED STATES, AND THE RISE OF THE NEW IMPERIALISM* 24, 31–33 (2006).

18. DUDZIAK, *supra* note 1, at 31.

pursued, the costs incurred, both quantitative and qualitative, and, of course, casualties.<sup>19</sup> Dudziak stays well away from these markers. While wanting to characterize the Cold War as a period of “small wars, surveillance, and stalemate,”<sup>20</sup> she admits that Korea and Vietnam, certainly two of the most significant and consequential wars in American history, were “major wars”<sup>21</sup> that, as illustrated by their memorials on the National Mall, did not last forever. Unfortunately, Dudziak’s dogged effort to show that all of our pre-9/11 reality was an endless wartime sends the analysis in the book off track.

Dudziak’s most valuable contributions lie elsewhere. She brings the history of the Cold War to bear on the seemingly endless “war on terror” that ensued after 9/11.<sup>22</sup> In focusing on the Cold War, Dudziak makes the important point that the metaphor of “war” can be so mesmerizing that it can cause analysis to go astray.<sup>23</sup> The Cold War is more fruitfully understood as “a period of state-building,”<sup>24</sup> rather than wartime. Setting to one side major wars such as Korea and Vietnam, key developments revolved around the creation and maintenance of “the national security state” rather than discrete battles.<sup>25</sup> This is quite helpful in directing our attention to the issue of state capacity and the relative ability of government officials, particularly those in the executive branch, to make effective policy decisions.

The Cold War constitutional order appeared to underwrite granting the President the authority to order the nation to war.<sup>26</sup> President Truman’s 1950 decision to intervene in Korea without asking for congressional authorization is well known.<sup>27</sup> In an especially insightful discussion, Dudziak correctly emphasizes the enormous authority that flowed, seemingly automatically, to President Bush as commander in chief after 9/11.<sup>28</sup> Instead of highlighting the unusual character of the “war” he was about to fight against al-Qaeda, a somewhat diffuse organizational target, Bush chose to assimilate our post-9/11 reality to World War II and the early years of the Cold War and replace Nazis and communists with terrorists in general.<sup>29</sup> Dudziak’s discussion helps us understand why this was a crucial narrative move within the structure of the national security state, but also why it concealed deep and problematic ambiguities.<sup>30</sup>

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19. This is the approach I take in a forthcoming book, STEPHEN M. GRIFFIN, *LONG WARS AND THE CONSTITUTION* (forthcoming 2013).

20. DUDZIAK, *supra* note 1, at 68.

21. *Id.* at 73. On the significance of Korea and Vietnam, see, for example, GEORGE C. HERRING, *AMERICA’S LONGEST WAR: THE UNITED STATES AND VIETNAM, 1950-1975* (4th ed. 2002); WILLIAM STUECK, *RETHINKING THE KOREAN WAR: A NEW DIPLOMATIC AND STRATEGIC HISTORY* (2002).

22. DUDZIAK, *supra* note 1, at 113–14, 118.

23. *Id.* at 68–69.

24. *Id.* at 91.

25. *Id.*

26. *Id.* at 88 (discussing the Supreme Court’s decision in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952), which held President Truman’s executive order allowing the government to seize steel mills for operation during war time was an unconstitutional exercise of presidential power).

27. See the discussion in Jane E. Stromseth, *Rethinking War Powers: Congress, the President, and the United Nations*, 81 GEO. L.J. 597, 621 (1993).

28. DUDZIAK, *supra* note 1, at 103–08.

29. See, e.g., GEORGE W. BUSH, *DECISION POINTS* 137 (2010).

30. DUDZIAK, *supra* note 1, at 100–07.

Dudziak's discussion of the Bush administration's reaction to 9/11 is well done, but even here we should take out the caution flag. Under the rubric of exploring the meaning of wartime, Dudziak runs together a number of different issues that are best analyzed separately. At one and the same time, she advances critiques of the militarization of foreign policy, the concept of a broad "war on terror," and implicitly raises matters that are more properly considered in terms of what Julian Zelizer has reminded us are the politics of national security.<sup>31</sup> Meanwhile, amid the concerns of Dudziak and many others about the novel issues posed by the Guantanamo detainees and constitutionally questionable surveillance by the National Security Agency, the United States fought two fairly conventional wars using thousands of ground troops in Afghanistan and Iraq.<sup>32</sup> My specific concern is that we might be led to overlook their significance if we bought Dudziak's idea that throughout the post-1945 period (throughout the entire twentieth century!) we were "at war" in the same sense we were at war in Korea, Vietnam, the 1991 Gulf War, Afghanistan, and Iraq.<sup>33</sup> Dudziak usefully alerts us to the question of timing — when, exactly, did the Vietnam War begin?<sup>34</sup> — and the often disingenuous character of occasional presidential claims that we were in a World War II-style wartime in the absence of sufficient democratic deliberation.<sup>35</sup> However, Dudziak also bypasses any attempt to study the relevant differences and assess the relative historical significance of the varied military conflicts the United States has fought.

Here we might usefully reverse the question posed earlier about peacetime and ask when was the last time there was a consensus that we were in wartime. Dudziak rightly contends that World War II remains the template for a "real war" for many Americans.<sup>36</sup> It featured multiple declarations of war, vast powers given to the President by Congress, and presidential calls for national sacrifice and austerity, including greatly increased tax rates to pay for the war.<sup>37</sup> So understood, a good case can be made that this "good war" was the very last real wartime.<sup>38</sup> None of America's costly wars since have featured all of these elements at once, although Korea arguably came close.<sup>39</sup> This was partly due to the ambiguous nature of the Cold War.<sup>40</sup> During its long run, presidents appeared to want the ability to go to war without having the democratic deliberation necessary to alert the public to the sacrifices war inevitably entails.<sup>41</sup>

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31. See generally JULIAN E. ZELIZER, *ARSENAL OF DEMOCRACY: THE POLITICS OF NATIONAL SECURITY—FROM WORLD WAR II TO THE WAR ON TERRORISM* (2010).

32. See PETER L. BERGEN, *THE LONGEST WAR: THE ENDURING CONFLICT BETWEEN AMERICA AND AL-QAEDA* 172–77 (2011).

33. See generally DUDZIAK, *supra* note 1.

34. *Id.* at 26, 37.

35. *Id.* at 104–06.

36. *Id.* at 61–62.

37. See ZELIZER, *supra* note 31, at 60–80.

38. DUDZIAK, *supra* note 1, at 61–62.

39. See STUECK, *supra* note 21, at 39–83 (detailing the initial stages and wartime atmosphere during the U.S. initiative in Korea).

40. See DUDZIAK, *supra* note 1, at 72–73.

41. *Id.* at 90 ("Truman went further than he needed to in greatly expanding the military budget, in American actions in Korea, and in political repression at home.").

The equivocal nature of the Cold War and the post-9/11 “war on terror,” however, did not diminish the constitutional, political, policy, social, and cultural realities that rapidly accrue when the United States puts tens or hundreds of thousands of “boots on the ground” in foreign locales. As the war in Afghanistan wore on and the war in Iraq finally came to a conclusion in 2011, the American public was quite credibly said to be “war-weary.”<sup>42</sup> But how could citizens be war-weary in the age of the all-volunteer military, when President Bush did not ask citizens to pay for the war with increased taxes and did not invoke a shared sense of national sacrifice?<sup>43</sup> In a democracy, wars on the scale of Iraq and Afghanistan evidently cannot be fought without public involvement, without the summoning of the morale necessary to underwrite their painful consequences. The public clearly stood behind the military after 9/11 and there was a sense of a common purpose in opposing the threat of terrorism by al-Qaeda.<sup>44</sup> Yet, there is nothing in American history to suggest that such a shared commitment can be sustained indefinitely amid much travail. We may nod our heads in approval, thinking this is an obvious point, but it undermines the coherence of Dudziak’s project.

Whether intended or not, Dudziak’s analysis has the effect of painting all wars the same, a perspective which is intended to show that we have lost our way when we continually try to reestablish the boundary line between periods of war and peace.<sup>45</sup> Although this is a valuable cautionary insight, it also involves an unacceptable flattening of history. While it is likely that Dudziak would not endorse the idea that Vietnam was equivalent to, say, President Reagan’s 1983 invasion of Grenada, that is the effect produced by her narrative. All wars look the same on Dudziak’s account because the notion of wartime itself lacks a clear boundary.<sup>46</sup> The distinctive political, constitutional, and diplomatic history of each war is smeared together in a way that impedes our understanding of the unique challenges and historical significance posed by conflicts on the scale of Vietnam and Iraq.<sup>47</sup>

We might agree that there is an obvious difference in scale between Grenada and other “small wars” and interventions like Vietnam that always carry with them the potential for national catastrophe. Dudziak could still press the point of the lack of a clear boundary line. When is wartime?<sup>48</sup> For complex reasons of politics, worries about the use of nuclear weapons, and considerations of international law, post-Korea wars — including those in Afghanistan and Iraq — have been marked by congressional authorizations rather than declarations.<sup>49</sup> Such authorizations have a history going back

42. See, e.g., Scott Wilson & Jon Cohen, *Post-ABC News Poll Shows Drop in Republican Support for Afghan War*, WASH. POST (Apr. 12, 2012), [http://www.washingtonpost.com/politics/post-abc-news-poll-shows-drop-in-republican-support-for-afghan-war/2012/04/11/gIQAfl5oBT\\_story.html](http://www.washingtonpost.com/politics/post-abc-news-poll-shows-drop-in-republican-support-for-afghan-war/2012/04/11/gIQAfl5oBT_story.html).

43. On Bush’s failure to ask for national sacrifice, see BERGEN, *supra* note 32, at 57–58.

44. DUDZIAK, *supra* note 1, at 103.

45. *Id.* at 15–21.

46. *Id.* at 16–17.

47. *Id.* at 8.

48. See *id.* at 15–21.

49. The leading analysis of congressional authorization regarding Afghanistan and Iraq is detailed in Curtis A. Bradley & Jack L. Goldsmith, *Congressional Authorization and the War on Terrorism*, 118 HARV. L. REV. 2047 (2005).

to the Eisenhower administration.<sup>50</sup> Yet they are treated by Dudziak and other historians with some surprise, as if the United States should still be issuing declarations to mark the boundary crossed when it goes to war.<sup>51</sup>

This raises a more fundamental issue. In light of the democratic deliberation implied by such authorizations, why should we be worried about endless wartime? Dudziak links wartime to the enhancement of centralized state power, especially executive power.<sup>52</sup> Such an expansion of power is said to be justified by the temporary nature of wartime.<sup>53</sup> Dudziak calls this the “wartime frame,”<sup>54</sup> a perspective that strongly determines the proper role of government. Within the frame, we are reassured by public officials that after the war, things will return to normal.<sup>55</sup> But if wartime is not temporary, what has really occurred is a permanent expansion in the power of the state without sufficient democratic deliberation.<sup>56</sup>

Although this thesis is suggestive, it is too broad and undifferentiated. Applied to the Cold War, it does not work, although this is partly due to the somewhat odd failure of historians to agree on a periodization of that long struggle.<sup>57</sup> The early Cold War supervised by Truman, Eisenhower, and Kennedy was a distinct period and was quite different from, for example, the era of *détente* under Nixon.<sup>58</sup> Nevertheless, the Cold War was technically still going on in the 1970s when Congress belatedly tried to *decrease* state power by reining in the presidency and elements of the national security state.<sup>59</sup> President Nixon vetoed the 1973 War Powers Resolution, but on the grounds that it unacceptably detracted from the president’s power over foreign affairs, not that it was unwise because the nation was in wartime.<sup>60</sup> Earlier, President Johnson had not claimed broad wartime powers even as he initiated the Vietnam War, precisely because he wanted to avoid alarming the public.<sup>61</sup> True, under Johnson and Nixon, the intelligence agencies carried out secret domestic operations restricting civil liberties in the name of national security.<sup>62</sup> But we would be wrong to ignore the relevance of the secrecy. These secretive tactics point in the direction of showing the inherent instability of the national security state instead of a public consensus that the exercise of this sort of power was accepted because the nation was in a temporary state of wartime.<sup>63</sup>

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50. See Stromseth, *supra* note 27, at 638.

51. DUDZIAK, *supra* note 1, at 104.

52. *Id.* at 22–26.

53. *Id.* at 25.

54. *Id.*

55. *Id.* at 133–34.

56. *Id.* at 21–26, 133–34.

57. See *id.* at 73–74 for Dudziak’s comments on this point.

58. For a discussion of the differences in *détente* under Nixon, see ROBERT DALLEK, *PARTNERS IN POWER: NIXON AND KISSINGER* 285–324 (2007).

59. See *id.* at 137–38.

60. Richard Nixon, *Veto of the War Powers Resolution*, THE AM. PRESIDENCY PROJECT, Oct. 24, 1973, available at <http://www.presidency.ucs.edu/ws/?pid=4021>. It should be noted that Congress overrode Nixon’s veto. *Id.*

61. See HERRING, *supra* note 21, at 131–32.

62. *Id.* at 219–20 (discussing the CIA’s surveillance of antiwar leaders as instructed by President Johnson); see also *id.* at 279 (discussing the same tactics of President Nixon).

63. See the discussion in chapter four of GRIFFIN, *supra* note 19.

This suggests wartime as a form of time is not the most relevant variable. Enhanced government power has not been justified by the assertion that war is a temporary time, but rather by the President making a compelling case that there is a genuine threat to national security. The level of power granted to government then varies with the nature of the threat, which helps explain why the Bush administration's unilateralism became less persuasive over time, including with the Supreme Court.<sup>64</sup> It is one of the reasons President Truman lost the Steel Seizure case, something Dudziak cannot explain using an analysis based on the idea that we have been in wartime for decades.<sup>65</sup> If we follow Dudziak's logic, the Court should have been impressed by the wartime frame created by Truman's dramatic 1950 decision to intervene. Instead, the Court closely interrogated presidential authority, something made easier by the fact that Truman could not show that the labor strike at issue posed an imminent danger to troops on a stalemated front line.<sup>66</sup>

To generate a more useful analysis across the wide range of military conflicts in which America has engaged since World War II, we need to articulate and probe the constitutional structure of the national security state that originated with the Cold War. Ultimately, what drives Dudziak's analysis is her reaction to the atypical case of 9/11. 9/11 was atypical for many reasons. It was an attack on the United States itself — something rare in recent memory. Even the Cold War did not have this feature. As Dudziak describes, this is why so many Americans thought immediately of Pearl Harbor as they watched the twin towers of the World Trade Center come down.<sup>67</sup> While this obviously assisted Bush as he likened the post-9/11 period to World War II, it led his administration astray as this analogy provided no natural opening for him to educate the public on the many novel features of the conflict against al-Qaeda, a non-state adversary operating in many countries.<sup>68</sup>

As a consequence, we are still floundering in many respects in trying to understand the ongoing war against al-Qaeda originally authorized by Congress after 9/11. Despite Congress's arguable clarity in the September 2001 Authorization to Use Military Force ("AUMF"), one undisputable fact that will be studied by future historians is that many observers, both international and domestic, never accepted the resulting conflict as "war" and thus wartime.<sup>69</sup> I certainly agree with Dudziak that we do not want the framing of wartime to determine our actions. Deciding that the conflict with al-Qaeda in Afghanistan was a war was indeed a choice — one shared by many Americans, including

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64. See Dudziak's summary in DUDZIAK, *supra* note 1, at 120–27.

65. See *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 587–89 (1952). For Dudziak's discussion of the case, see DUDZIAK, *supra* note 1, at 88–89.

66. *Youngstown*, 343 U.S. at 587.

67. DUDZIAK, *supra* note 1, at 99.

68. See BERGEN, *supra* note 32.

69. On this point, see Mary L. Dudziak, *This War Is Not Over Yet*, N.Y. TIMES, Feb. 16, 2012, at A31; Anna Stolley Persky, *Lethal Force*, WASH. LAW., Mar. 2012, available at [http://www.dcb.org/for\\_lawyers/resources/publications/washington\\_lawyer/march\\_2012/lethal\\_force.cfm](http://www.dcb.org/for_lawyers/resources/publications/washington_lawyer/march_2012/lethal_force.cfm); John Fabian Witt, *The Legal Fog Between War and Peace*, N.Y. TIMES (June 11, 2012), <http://www.nytimes.com/2012/06/11/opinion/the-legal-fog-between-war-and-peace.html>.



President Obama.<sup>70</sup> What I would like Dudziak and others to see more clearly is that this war was attended by democratic deliberation, however flawed, rather than being imposed by an executive branch offering the assurance of a temporary wartime.

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70. See JAMES MANN, *THE OBAMIANS: THE STRUGGLE INSIDE THE WHITE HOUSE TO REDEFINE AMERICAN POWER* 129–41 (2012) (discussing Obama's consistent public position in favor of greater efforts to prosecute the war in Afghanistan).